

Senate File 317 - Introduced

SENATE FILE _____
BY WOOD

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act requiring in-state home improvement contractors to obtain
2 surety performance bonds, and providing a criminal penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 2425SS 82
5 ak/es/88

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1 1 Section 1. NEW SECTION. 91C.6A REGISTRATION REQUIRED ==
1 2 IN=STATE CONTRACTS.
1 3 A contractor who is not registered with the labor
1 4 commissioner as required by this chapter shall not be awarded
1 5 a contract to perform work for the state or an agency of the
1 6 state.
1 7 Sec. 2. NEW SECTION. 91C.6B HOME IMPROVEMENT CONTRACTOR
1 8 PERFORMANCE BOND.
1 9 1. a. A contractor shall file with the division of labor
1 10 services of the department of workforce development a surety
1 11 bond. The bond shall be in the amount of seventy-five
1 12 thousand dollars and shall be for the benefit of any person
1 13 who, in connection with a home improvement contract with a
1 14 contractor, is damaged by a contractor's breach of the home
1 15 improvement contract or by a contractor's violation of section
1 16 714.16, subsection 2, paragraph "a". Any person so damaged
1 17 may bring suit directly on the bond without assignment, and
1 18 may recover from bond proceeds actual damages, court costs,
1 19 and reasonable attorney fees.
1 20 b. A person filing suit pursuant to this section shall
1 21 notify the division of labor services of the department of
1 22 workforce development at the time suit is filed, and the
1 23 division of labor services of the department of workforce
1 24 development shall maintain a record, available for public
1 25 inspection and copying, of all suits commenced. Notification
1 26 is not a precondition to the filing of a suit, and failure to
1 27 notify the division of labor services of the department of
1 28 workforce development shall in no way affect the validity of a
1 29 lawsuit.
1 30 2. The attorney general may bring an action in equity on
1 31 behalf of the state to recover bond proceeds for persons who
1 32 incur damage due to a contractor's breach of a home
1 33 improvement contract or violation of section 714.16,
1 34 subsection 2, paragraph "a", in connection with a person's
1 35 home improvement contract with a contractor.
2 1 3. Priority for payment of the proceeds of a bond issued
2 2 pursuant to this section shall be based upon the time of
2 3 filing notice of suit with the division of labor services of
2 4 the department of workforce development, except that any
2 5 action by the attorney general to recover bond proceeds shall
2 6 take precedence over all other claims on the bond, regardless
2 7 of the time of filing.
2 8 4. The issuer of a bond shall notify the labor
2 9 commissioner if a bond issued pursuant to this section is
2 10 canceled. If a bond issued pursuant to this section ceases to
2 11 be in effect, the contractor's registration pursuant to this
2 12 chapter shall be void. The failure of a contractor to have a
2 13 valid surety bond on file with the division of labor services
2 14 of the department of workforce development as of the date of a
2 15 home improvement contract shall make the contract and any
2 16 note, instrument, or other evidence of indebtedness executed
2 17 or entered into in connection with the contract voidable, and
2 18 shall constitute a complete defense in any action based on the
2 19 contract, note, instrument, or other evidence of indebtedness
2 20 brought by the contractor or the contractor's successors or

2 21 assigns.

2 22 5. Any contractor who violates the provisions of this
2 23 section shall be guilty of a simple misdemeanor.
2 24 Sec. 3. Section 91C.7, subsection 1, Code 2007, is amended
2 25 by striking the subsection.

2 26 EXPLANATION

2 27 This bill requires that in-state contractors who take
2 28 contracts for home improvement work to obtain a surety bond of
2 29 \$75,000 before accepting contracts. The bond benefits a
2 30 person who may be damaged by a contractor's breach of contract
2 31 or by a contractor's violation of Code section 714.16,
2 32 subsection 2, paragraph "a", the consumer fraud statute. Any
2 33 person damaged in either way may sue directly on the bond and
2 34 may recover actual damages, court costs, and reasonable
2 35 attorney fees. When the suit is filed, the person who sues on
3 1 the bond shall notify the division of labor services of the
3 2 department of workforce development, which shall keep a public
3 3 record of all suits commenced. However, notification is not a
3 4 precondition to filing a suit and failure to notify the
3 5 department does not in any way invalidate the lawsuit.

3 6 The bill states that the attorney general may also bring an
3 7 action in equity against the bond on behalf of the state to
3 8 recover bond proceeds for persons damaged due to a
3 9 contractor's breach of contract or violation of the consumer
3 10 fraud statute in connection with a home improvement project
3 11 contract.

3 12 The bill provides that damages will be paid from the
3 13 proceeds of the bond based on the time of filing notice of
3 14 suit with the division of labor services of the department of
3 15 workforce development, except that any action by the attorney
3 16 general to recover damages against the bond shall take
3 17 precedence over all other claims, no matter the time of
3 18 filing.

3 19 The bill requires that when a bond issued pursuant to this
3 20 section is canceled, notice shall be given to the labor
3 21 commissioner by the issuer of the bond. If the bond becomes
3 22 ineffective, then the contractor's registration pursuant to
3 23 this chapter becomes void. The bill provides that the failure
3 24 of a contractor to have a valid surety bond on file as of the
3 25 date of a home improvement contract makes the contract and any
3 26 note or instrument of indebtedness executed or entered into in
3 27 connection with the contract voidable, and shall be a complete
3 28 defense in any action brought based on the contract or
3 29 evidence of indebtedness by the contractor or the contractor's
3 30 successors or assigns.

3 31 The first section of the bill moves a current provision of
3 32 law that requires a contractor to be registered with the state
3 33 prior to being awarded a contract from the state to a separate
3 34 section so that it applies to all contractors.

3 35 The bill provides that a contractor who violates the
4 1 provisions of this Code section is guilty of a simple
4 2 misdemeanor. A simple misdemeanor is punishable by
4 3 confinement for no more than 30 days or a fine of at least \$65
4 4 but not more than \$625 or by both.

4 5 LSB 2425SS 82

4 6 ak:rj/es/88.1